XI HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक Cr.A No. 196/2002 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT Narbadia W/o Kacharu Lodhi, aged about 60 years, R/o Gram Bundera P.S. Utai, Distt. Durg

Vs.

RESPONDENT State of Chhattisgarh, through P.S. Utai, Distt. Durg

31-8-2007

Ku. Nirupma Bajpai, Advocate for the appellant.

Shri Sushil Dubey, Addl. Public Prosecutor for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 27-11-2001 passed in Sessions Trial No. 56/2001 whereby learned Sessions Judge, Durg has convicted the appellant under Sections 436, 324, 454 and 380 of I.P.C. and sentenced to undergo R.I. for 7 years with fine of Rs. 100/-, in default of payment of fine to undergo R.I. for one month, to undergo R.I. for 6 months, to undergo R.I. for one year with fine of Rs. 50/- in default of payment of fine to undergo R.I. for 15 days and to undergo R.I. for one year with fine of Rs. 50/- in default of payment of fine, to further undergo R.I. for 15 days respectively.

3. Case of the prosecution, in brief, is that the appellant was abusing the complainant Dehutibai with filthy language on 13-12-2000 at about 11.30 a.m., when her son forbad her, the accused went near the house of the complainant and started abusing and assaulting the complainant. The complainant went to the house of Kotwar who was not in his house. Thereafter she went to the house of Lukeshwar. In the meanwhile, Gopal, Dhal Singh and Kanta etc. informed her that Narbadiabai has set her house on fire. In the past also, the appellant had threatened the complainant that

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she will set her house on fire. When she reached there, she saw that the roof of her house was burning. The fire was extinguished with the help of neighbours. She was also informed by Firtu Sahu (P.W.3) that the appellant has stolen the water pot (Gundi) from her house. Report of the incident was lodged in Police Station Utai vide Ex. P-5 on 13-12-2000 at 11.30 hrs. During investigation, the burnt roof and bamboo sticks etc. were taken into possession vide Ex. P-4 on the memorandum of accused vide Ex. P-11. Sickle and water pot were taken into possession from the accused vide seizure memo of Ex. P-10. After completing investigation, charge sheet was filed.

4. During trial, 13 witnesses were examined by the prosecution. The appellant has taken a defence before the trial Court that she had stopped the students of the school from plucking drumsticks from her tree, however they complained her mother and thereafter son of the complainant came and assaulted her by lathi as a result of which she sustained injuries and she in fact had lodged the report first however, learned trial Court after hearing the learned counsel for the parties has convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that there is no eye-witness to the fact that the appellant had in fact set the house of the complainant on fire and the conviction of the appellant is based on conjectures and surmises. P.W. 2 Meena has claimed that she saw Narbadiabai setting fire the house of the complainant as she brought match box and kerosene with her, however in her diary statement of Ex. D-1, she has stated that when she came out of her house, she saw that the house of Dehuti Bai had caught fire. She further submits that Dhai Sing and Gopal

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आदेश पत्रक (पूर्वानुबद्ध)

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who allegedly informed the complainant that the appellant had set her house on fire, have not been examined and thus the conviction of the appellant under section 436 of I.P.C. which is based on the statement of P.W. 5 Dehuti and P.W. 2 Meena cannot be sustained. Conviction of the appellant under Sections 454 and 380 of I.P.C. is based on the statements of Firtu (P.W. 3) and also on the basis of the seizure memo of Ex. P-10 of the accused. Counsel further submits that the water pot in question was in fact left by the complainant herself in her house and this has been duly explained by the appellant in her statement under Section 313 of Cr.P.C.

6. On the other hand, learned counsel for the State supports the impugned judgment.

7. I have heard learned counsel for the parties.

8. P.W. 5 Dehti Bai in her deposition has stated that the appellant is a quarrelsome lady, she is in the habit of abusing villagers. On the date of incident also, the appellant was abusing. She rushed towards her house threatening that she will set her house on fire and started throwing clod and assaulted the complainant by sickle as result of which she sustained injury on her forehead. She went to the house of Kotwar with her children. While she was in the house of Kotwar, she was informed by Kotwar that the appellant has set her house on fire and she herself had gone to police station to lodge the report, whereupon she returned to her house where Meena and others told her that the appellant has set her house on fire. Firtu informed that the accused has taken water pot (Gundi) from her house, thereafter she lodged the report of Ex. P-5.

9. P.W. 2 Meena claims herself to be eye-witness to the fact that the appellant had set the house of the complainant on fire, however, she has

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not mentioned this fact in her diary statement. On the contrary, she has stated in her diary statement that when she came out of her house, she saw that the house of Dehuti Bai had caught fire. The Court below placing reliance upon the statements of P.W. 5 Dehuti and P.W. 2 Meena, in para 18 of the judgment has held that the appellant had threatened the complainant that she shall set her house on fire and thereafter she was abusing the persons who were extinguishing the fire, therefore it is proved beyond reasonable doubt that the appellant was responsible for setting the house of the complainant on fire. The above finding is based on the statements of P.W. 2 Meena and the complainant. Except Meena, none of the witnesses has stated that the appellant was stopping the persons from extinguishing fire. So far as statement of Meena (P.W. 2) is concerned, she has made material improvement in her diary statement of Ex. D-1 and she has turned as eye-witness before the Court though as per the diary statement, she did not witness the incident, therefore the Court below was not justified to act upon the statement of P.W. 2 Meena for the purposes of coming to the conclusion that the appellant had set the house of the complainant on fire and benefit of doubt ought to have been given to the appellant, therefore, conviction of the appellant under Section 436 of I.P.C. cannot be sustained.

10. So far as conviction of the appellant under Sections 454 and 380 of I.P.C. is concerned, the same is based on statement of Firtu as also on the recovery of stolen articles on the memo of the accused vide Ex. P-11 and there is no cross-examination of Firtu. On the other hand, the accused herself has admitted that the recovery of stolen articles was made from her house, therefore, conviction of the appellant under Sections 454 and 380 of

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आदेश पत्रक (पूर्वानुबद्ध)

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	I.P.C. appears to be proper and no interference is called for in the above finding. Similarly, conviction of the appellant under Section 324 of I.P.C. is based on the statements of Dehutibai as also the other witnesses who have seen the appellant quarrelling with the complainant, therefore, the finding of the trial Court in this regard also does not call for any interference. 11. In the result, the appeal is partly allowed. Conviction of the appellant under Section 436 of I.P.C. and the sentences imposed under that section are set aside. However, her conviction under Sections 454, 380 and 324 of I.P.C. and the sentences imposed under those sections are maintained. 12. It is stated that the appellant was in jail from 14-12-2000 to 28-2-2001 and from 12-5-2001 till date, which is not disputed by learned counsel for the State and as such she has already completed more than 6 years of jail sentence, therefore, it is directed that the appellant be set at liberty forthwith if not required in any other case. Sd/- DHIRENDRA MISHRA Judge	